

9 FAM 40.104 NOTES

(CT:VISA-2035; 10-03-2013)
(Office of Origin: CA/VO/L/R)

9 FAM 40.104 N1 INADMISSIBILITY FOR UNLAWFULLY VOTING

(CT:VISA-2035; 10-03-2013)

In general, an alien who admits voting in the United States in violation of a Federal, State or local law, ordinance or regulation would generally be inadmissible under INA 212(a)(10)(D). *(See exception 9 FAM 40.104 N4.)* If the alien admits to voting in the United States, you should make a record of the circumstances *in the case notes*, in the event that the alien later refutes the statement or circumstances. If in your judgment, the alien may later on refute the finding of ineligibility, you should give the alien an opportunity to write a statement regarding the circumstances of his or her voting. Such detail may also be necessary if an advisory opinion is requested.

9 FAM 40.104 N2 APPLICABILITY

(CT:VISA-2035; 10-03-2013)

Inadmissibility under INA 212(a)(10)(D) applies to an alien who at any time has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance or regulation. *(See 22 CFR 40.104.)* *Consular officers should consider whether the ineligibility of INA 212(a)(6)(C) may also apply in these circumstances, since the act of voting in the United States often involves an affirmative assertion of U.S. citizenship. (See 9 FAM 40.63.)*

9 FAM 40.104 N3 STANDARDS FOR APPLYING INA 212(A)(10)(D)

(CT:VISA-1334; 10-05-2009)

Normally, you can presume that an alien voting in a political election did so in violation of some law or ordinance. The alien should be provided every opportunity to prove that the particular election regulations permitted his or her participation. If, however, you seek verification of those voting requirements, or if

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a case arises in which you have any question of this ground of inadmissibility, you should submit an advisory opinion request to the Department (CA/VO/L/A).

9 FAM 40.104 N4 EXCEPTION

(CT:VISA-1334; 10-05-2009)

The Child Citizenship Act of 2000 (sec. 201(b) of Public Law 106-395) added an exception for inadmissibility under INA 212(a)(10)(D) for an alien who voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation if:

- (1) Each parent is or was a U.S. citizen by birth or naturalization;
- (2) The alien resided permanently in the United States prior to the age of 16; and
- (3) The alien reasonably believed at the time of such violation that he or she was a U.S. citizen.

9 FAM 40.104 N5 WAIVERS

(CT:VISA-2035; 10-03-2013)

There is no waiver available for immigrants inadmissible under INA 212(a)(10)(D). An inadmissible nonimmigrant may apply for a waiver under INA 212(d)(3)(A) *upon favorable recommendation of a consular officer or the Secretary of State.* (See 9 FAM 40.301 Related Statutory/Regulatory Provisions and 9 FAM 40.301 Notes.)